

**BEFORE THE LEWIS COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**IN RE:**

APPROVAL OF AN INTERLOCAL AGREEMENT )  
BETWEEN LEWIS COUNTY, ACTING AS THE LEAD )  
AGENCY FOR THE CHEHALIS RIVER BASIN )  
FLOOD AUTHORITY, AND PUBLIC UTILITY )  
DISTRICT NO.1 FOR FUNDING OF A PHASE IIB )  
STUDY OF WATER RETENTION FACILITIES FOR )  
FLOOD CONTROL, NOT TO EXCEED \$230,000 )

Resolution No. 10- 0460

WHEREAS, the PUBLIC UTILITY DISTRICT NO. 1 OF LEWIS COUNTY (PUD) and LEWIS COUNTY, acting as lead agency for the Chehalis River Basin Flood Authority (Flood Authority), are both political subdivisions of the State of Washington, and desire to enter into an Agreement pursuant to the Interlocal Cooperation Act, RCW Chapter 39.34,

WHEREAS, the Flood Authority, on January 21, 2010, approved funding, not to exceed \$230,000, for a Phase IIB study by the PUD of potential water retention facilities and authorized Lewis County to enter into an agreement for funding by the Flood Authority; and

WHEREAS, water retention facilities may mitigate the adverse impacts associated with flooding and provide secondary benefits, including generation of renewable energy and water quality improvements, but such data are not available; and

WHEREAS, an Interlocal Agreement has been negotiated between Lewis County, acting as the lead agency for the Flood Authority, and the PUD (attached); and

WHEREAS, the Board of County Commissioners has reviewed the Interlocal Agreement and has determined that is appropriate to enter into an agreement for funding of the Phase II study; and

WHEREAS, it appears to be in the best public interest to approve this Interlocal Agreement for funding of Phase IIB studies as may be necessary in assessing and prioritizing potential flood mitigation projects, NOW THEREFORE

BE IT RESOLVED that: the Board of County Commissioners of Lewis County hereby approves of the terms and conditions of the attached Interlocal Agreement, and hereby authorizes the Chairman of the Board to execute the agreement on behalf of the County, to become effective immediately.

DONE IN OPEN SESSION this 22 day of February, 2010.

APPROVED AS TO FORM:  
Michael Golden, Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS  
LEWIS COUNTY, WASHINGTON

**INTERLOCAL AGREEMENT BETWEEN LEWIS COUNTY, LEAD AGENCY OF THE CHEHALIS RIVER BASIN  
FLOOD AUTHORITY, AND PUBLIC UTILITY DISTRICT NO.1 OF LEWIS COUNTY REGARDING FUNDING OF  
PHASE IIB STUDY OF WATER RETENTION FACILITIES IN THE UPPER CHEHALIS BASIN**

**THIS AGREEMENT** is made this 22 day of February, 2010, between PUBLIC UTILITY DISTRICT NO. 1 of LEWIS COUNTY, a public utility district (hereinafter "District"), and LEWIS COUNTY in the latter's capacity as lead agency of the Chehalis River Basin Flood Authority (hereinafter "County").

**WHEREAS**, the December 3, 2007 flooding event in the Chehalis River Basin ("Basin") is only one of the most recent flooding events in the Basin that has devastated the lands and citizens of the Chehalis River Basin ("Basin") in Grays Harbor, Lewis and Thurston counties;

**WHEREAS**, Lewis, Grays Harbor and Thurston counties, the Confederated Tribes of the Chehalis, the cities of Aberdeen, Centralia, Chehalis, Montesano, Oakville, and the towns of Bucoda and Pe Ell, have associated as the Chehalis River Basin Flood Authority (hereinafter "Flood Authority") to address the recurring, serious flooding of the Basin and to achieve solutions after numerous similar, unsuccessful attempts in the past;

**WHEREAS**, the Flood Authority is charged by House Bills 3374 and 3375 to investigate and undertake potential Basin-wide flooding solutions to avoid the recurring flood damage of the past;

**WHEREAS**, in 2008, the District hired EES Consulting to investigate whether water retention structures in key locations on the Chehalis River might protect families and businesses that have flooded as well as afford environmental benefits and instream flow and, secondarily, provide hydropower opportunities;

**WHEREAS**, at the District's own expense, EES Consulting conducted a "Phase I" study, determining that two water retention structures ("Projects"), one on the South Fork of the Chehalis River near Wildwood in the Boistfort Valley and a second on the main stem of the Chehalis River south of the Town of Pe Ell, will protect Basin families and businesses from flooding, as well as enhance summer flows and improve water quality of the Chehalis River and generate hydroelectric power;

**WHEREAS**, the District determined that a more detailed "Phase II" study was necessary to determine the feasibility of the Projects and the Flood Authority authorized initial funding of up to \$250,000 for a study limited to the preliminary engineering, site evaluation, fisheries and habitat evaluation that can be completed within the \$250,000 budget;

**WHEREAS** the Flood Authority directed Lewis County, as lead agency, to enter into an inter-local agreement with the District for performance of the "Phase II" study by EES Consulting, subject to the stated budget limitations and limitations on the scope of work, and which provided, *inter alia*, for the termination of the study if it disclosed any "fatal flaw" in the proposed Projects;

**WHEREAS** Lewis County and the District entered into an inter-local agreement governing the conduct of the Phase II study, which study was completed by the District and which study did not disclose a fatal flaw in the proposed Projects;

**WHEREAS**, on January 21, 2010, the Flood Authority directed Lewis County, as lead agency for the Authority, to enter into a new inter-local agreement with the District providing up to \$230,000 in funding for a "Phase IIB" study by EES Consulting updating and refining the economic and engineering studies and analyses in coordination with the Army Corps of Engineers, responding to written comments included in certain correspondence from the Washington State Department of Ecology, and preparing additional conceptual drawings and schedules;

**NOW, THEREFORE**, in consideration of the terms and conditions set forth herein, Lewis County and the Public Utility District No. 1 of Lewis County agree, as follows:

**1. Purpose.** This Inter-local Agreement (Agreement) implements the consensus decision of the Chehalis River Basin Flood Authority reached on February 18, 2010, directing the District to conduct the "Phase IIB" tasks in accordance with the scope and budget set forth in Exhibit A attached hereto and incorporated herein by reference, using no more than \$230,000 in funds appropriated by the Legislature for the Flood Authority and maintained by the State of Washington Office of Financial Management on behalf of the Authority, to be paid in monthly progress payments consistent with Exhibit A.

**2. Means of Undertaking.**

a. Lewis County is Lead Agency for the Flood Authority. In the event of the creation and/or operation of a flood control zone district(s) or flood control district as authorized by the Inter-local Agreement creating the Flood Authority, the parties agree that the Flood Authority may authorize Lewis County to assign its responsibilities and obligations under this Agreement to the flood control zone district or flood control district in compliance with the Flood Authority's direction.

b. By Resolution 2009-1 and with specific reference to the Phase II Study, the Authority created a subcommittee of Lewis County Commissioner William Schulte, Grays Harbor County Commissioner Terry Willis, and Mark White, Natural Resources Director of the Confederated Tribes of the Chehalis Reservation. With respect to the Phase IIB Study, the Sub-committee shall receive briefings from the District concerning the status and progress of the study.

**3. Definitions.** For purposes of this Agreement, the terms set forth below shall have the following meanings:

a. "Authority" means the Chehalis River Basin Flood Authority.

b. "Information" means all writings, programs, statements, declarations, summaries, software, photographs, digital images, statistics, tables, compilations, models, and other information provided by each party or its consultants to the other party or its consultants pursuant to this Agreement.

c. "Lead Agency" means Lewis County or, in the event of the Flood Authority's authorization, the flood control zone district(s) or flood control district authorized to assume the obligations of Lewis County under this Agreement.

d. "District" means the Public Utility District No. 1 of Lewis County.

e. "Parties" shall mean the District and Lewis County, as Lead Agency for the Flood Authority, or the flood control district or flood control zone district(s) assigned the obligations of Lewis County or the Authority under this Agreement or to whom those obligations are otherwise transferred.

f. "Sub-committee" means the subcommittee of the Chehalis River Basin Flood Authority created by Resolution No. 2009-1 of the Authority and consisting of: (1) Commissioner *William Schulte* of Lewis County; (2) Commissioner *Terry Willis* of Grays Harbor County; and (3) *Mark White*, Natural Resources Director of the Confederated Tribes of the Chehalis Reservation. If the Authority's and County's obligations under this Agreement are assigned or transferred to a flood control zone or flood control district(s), the Sub-committee shall be replaced by the supervisors of the said district(s).

**4. Ownership of Items Produced.** The information developed in performing the Scope of Work described in Exhibits A and B shall be delivered to and owned by the Authority to the extent the development of the information and data is paid for by the Authority. If the information is paid for by the flood control zone or flood control district(s), then the information shall be owned by the said district(s). All such information shall be fully accessible to and may be used by any member of the public for any lawful purpose.

**5. Notice.** Except as set forth elsewhere in this Agreement, and for all purposes except service of process, notices required under this Agreement shall be given by the District to the County at the following address: Chairman of the Lewis County Board of County Commissioners, 351 NW North Street, Chehalis, WA 98532. If the County's responsibilities under this Agreement are assigned or transferred to a flood control zone or flood control district(s), notice shall be given to the person and address as designated by such district(s). Notice to the District for purposes of this Agreement shall be given to the District at the following address: David Muller, P.O. Box 330, Chehalis, WA 98532. Notice may be given by depositing it in the US Mail, first class, postage prepaid. Notice shall be deemed effective two business days after mailing.

**6. Term.** This Agreement shall commence upon the earlier of (1) approval by the Flood Authority and execution of this Agreement by the District and Lead Agency or (2) receipt by the Authority of verbal or written approval or authorization by the Army Corps of Engineers to credit the cost of the Phase IIB Study toward the local sponsor's "match" under either the Twin Cities Project or the General Investigation Study of the Chehalis River Basin. When such approval or authorization is provided by a representative of the Army Corps of Engineers, the County, as lead agency of the Authority, or the flood control zone or flood control district(s) to whom the County and Authority's obligations have been assigned or otherwise transferred, shall enter into such agreements as may be necessary to secure and confirm the credit afforded by the Army Corps of Engineers. Notwithstanding the foregoing, the work

on the Phase IIB Study shall begin immediately upon receipt by the Authority of the Army Corp of Engineers approval or authorization to credit the cost of the Phase IIB Study toward the local sponsor's match and shall not be delayed by the preparation and processing of the Inter-local agreement with Grays Harbor County. This Agreement shall terminate upon either party's written notice terminating the Agreement. The termination shall be effective fourteen (14) days following notification of termination delivered to the other party and, in the case of termination by the lead Agency, no new work will be undertaken after receipt of notification. The District shall be entitled to receive compensation for work performed and costs reasonably incurred through the effective date of termination.

**7. Amendments.** Either party may request changes to this Agreement. Any and all agreed amendments shall be approved by the Authority and the District, shall be in writing and signed by the parties, and shall be effective on the latter date of execution by the respective parties.

**8. Waiver.** Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties.

**9. Severability.** If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held to be invalid, then such invalidity shall not affect the other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared to be severable.

**10. Survival.** The provisions of Paragraph 4 of this Agreement shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

**11. Venue and Choice of Law.** In the event that any dispute should arise concerning the interpretation of any of the terms of this Agreement, the venue of any litigation shall be in the Superior Court of the State of Washington for the County of Lewis. This Agreement shall be governed by the laws of the State of Washington. Each party shall be responsible for its own attorney fees.

**12. Entire Agreement.** This written Agreement represents the entire agreement of the parties and supersedes any prior oral statements, understandings, stipulations, discussions and understandings of the parties.

**IN WITNESS WHEREOF,** the parties have executed this Agreement this 22 day of February 2010.

**LEWIS COUNTY,**

In its capacity as Lead Agency for  
Chehalis River Basin Flood Authority

By

  
Chairman

**PUBLIC UTILITY DISTRICT NO. 1 OF LEWIS  
COUNTY**

By

  
Manager